

ORIGINAL

ERIC ANGEL THOMAS
 NAME
768246 - B3-A4-17 Low
 PRISON NUMBER

Folsom STATE PRISON - P.O. Box 715071
 CURRENT ADDRESS OR PLACE OF CONFINEMENT

REPRESENTA, CA 95671
 CITY, STATE, ZIP CODE

2254	1983
FILING FEE PAID	
Yes	No
IFP MOTION FILED	
Yes	No
COPIES SENT TO	
Court	ProSe

FILED

2007 NOV 29 PM 2:58

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY Rm DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ERIC ANGEL THOMAS
 (FULL NAME OF PETITIONER) PETITIONER

v.

M.C. KRAMER
 (NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED
 PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE
 CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

BILL LOCKYER
 The Attorney General of the State of
 California, Additional Respondent.

Civil No.

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
 BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: SAN DIEGO
COUNTY - SUPERIOR COURT, CENTRAL DIVISION - 220 W. BROADWAY SAN DIEGO, CA 92101-3877
2. Date of judgment of conviction: AUGUST 7, 2006
3. Trial court case number of the judgment of conviction being challenged: SCD197488
4. Length of sentence: 9 YEARS

5. Sentence start date and projected release date: AUGUST 15, 2006 WITH EXPECTED
RELEASE DATE OF APRIL 19, 2013
6. Offense(s) for which you were convicted or pleaded guilty (all counts): I WAS CONVICTED
OF POSSESSION F/SALE OF COK/BASE IN VIOLATION OF HEALTH AND SAFETY
CODES 11351.5 AND 11352.
7. What was your plea? (CHECK ONE)
- (a) Not guilty ☒
- (b) Guilty ☐
- (c) Nolo contendere ☐
8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
- (a) Jury ☒
- (b) Judge only ☐
9. Did you testify at the trial?
- ☐ Yes ☒ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?
- ☒ Yes ☐ No
11. If you appealed in the California Court of Appeal, answer the following:
- (a) Result: JUDGEMENT AFFIRMED
- (b) Date of result, case number and citation, if known: CASE NO. D04 9171 - SUPERIOR
CT. NO. SCD197488 APRIL 17, 2007
- (c) Grounds raised on direct appeal: IMPOSITION OF A SENTENCE UNDER THE
THREE STRIKE'S LAW WAS NOT THE PROPER SENTENCE CHOICE AND
THE EVIDENCE WAS NOT SUFFICIENT TO SUSTAIN CONVICTION ON COUNT
2 - POSSESSION FOR SALE OF COCAINE BASE.
12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:
- (a) Result: _____
- (b) Date of result, case number and citation, if known: _____
- (c) Grounds raised: _____

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result: _____
- (b) Date of result, case number and citation, if known: _____
- _____
- (c) Grounds raised: _____
- _____
- _____
- _____

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?
☐ Yes ☒ No

15. If your answer to #14 was "Yes," give the following information:

- (a) California Superior Court Case Number: _____
- (b) Nature of proceeding: _____
- _____
- (c) Grounds raised: _____
- _____
- _____
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No
- (e) Result: _____
- (f) Date of result: _____

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?
☐ Yes ☒ No

17. If your answer to #16 was "Yes," give the following information:

- (a) California Court of Appeal Case Number: _____
- (b) Nature of proceeding: _____
- _____
- (c) Grounds raised: _____
- _____

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No

(e) Result: _____

(f) Date of result: _____

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Supreme Court?
☒ Yes ☐ No

19. If your answer to #19 was "Yes," give the following information:

(a) California Supreme Court Case Number: S153425

(b) Nature of proceeding: WRIT OF HABEAS CORPUS

(c) Grounds raised: VIOLATION OF DUE PROCESS AND INEFFECTIVE ASSISTANCE OF COUNSEL

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☒ Yes ☐ No

(e) Result: PETITION DENIED

(f) Date of result: FILED OCTOBER 31, 2007

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court containing the grounds raised in this federal Petition, explain briefly why you did not:

S153425

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ERIC THOMAS on Habeas Corpus

The petition for writ of habeas corpus is denied. (See *In re Swain* (1949) 34 Cal.2d 300, 304; *People v. Duvall* (1995) 9 Cal.4th 464, 474.)

SUPREME COURT
FILED

OCT 31 2007

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your first federal petition for writ of habeas corpus challenging this conviction?

☒ Yes ☐ No (If "YES" SKIP TO #11)

(a) If no, in what federal court was the prior action filed? _____

(i) What was the prior case number? _____

(ii) Was the prior action (CHECK ONE):

☐ Denied on the merits?

☐ Dismissed for procedural reasons?

(iii) Date of decision: _____

(b) Were any of the issues in this current petition also raised in the prior federal petition?

☐ Yes ☐ No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

☐ Yes ☐ No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUND FOR RELIEF

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** VIOLATION OF Full Due Process of Law.

Supporting FACTS (state briefly without citing cases or law) THE COUNTY OF SAN DIEGO COMPLETELY DENIED ME U.S.C. 6TH AMENDMENT RIGHT TO COUNSEL WHICH INCLUDE THE RIGHT TO COUNSEL OF CHOICE. The County of San Diego DESPERATELY MOVED FOR A STATE CONVICTION BY FORCING A COURT APPOINTED ATTORNEY UPON ME, TO WHOM I DID NOT GIVE WRITTEN CONSENT TO REPRESENTATION. The Rules of Professional Conduct of The California State Bar MANDATES ITS MEMBERS TO OBTAIN A CLIENT'S INFORMED WRITTEN CONSENT. THIS PROCEDURE IS ADHERED TO BY BAR MEMBERS IN ORDER THAT A CLIENT'S CONSTITUTIONAL RIGHTS ARE NOT INFRINGED UPON. MY LOGIC FOR NOT CHOOSING TO GIVE THE COURT-APPOINTED ATTORNEY MY WRITTEN CONSENT TO REPRESENTATION IS BECAUSE HE WAS SELECTED BY THE SAME AGENCY RESPONSIBLE FOR MY PROSECUTION. BECAUSE HE WAS SELECTED, ALSO MEAN THAT HE WAS HIRED BY THE SAME AGENCY RESPONSIBLE FOR MY PROSECUTION. THIS IS AUTOMATIC ADVERSE REPRESENTATION BECAUSE IT BLATANTLY DENIED ME U.S.C 5TH, 6TH, AND 14TH AMENDMENT RIGHTS. NOT ONLY WILL GIVING A COURT APPOINTED ATTORNEY MY INFORMED WRITTEN CONSENT, DISSOLVE MY U.S.C 6TH AMENDMENT RIGHT TO COUNSEL OF CHOICE BUT IT DEPRIVES INDIGENT AND OFTEN UNINFORMED CRIMINAL DEFENDANTS OF EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION. REGARDLESS OF MY FINANCIAL STATUS, THE SUPERIOR COURTS OF SAN DIEGO COUNTY SHOULD NOT HAVE IGNORED MY CONTINUED PROTEST TO THIS

Did you raise GROUND ONE in the California Supreme Court?

☒ Yes ☐ No.

1 ILLEGAL REPRESENTATION. ON APRIL 3 2006, SAN DIEGO COUNTY SUPERIOR
2 COURT JUDGE GEORGE. W. CLARKE DENIED MY MOTION TO HAVE THE COURT
3 APPOINTED ATTORNEY MR. GARY EDWARDS REMOVED FROM THE CASE. JUDGE
4 CLARKE ALSO REFUSED TO GRANT ME REASONABLE TIME TO SEEK OUT AND
5 CONTACT AN ATTORNEY OF MY CHOICE, BY STATING IN THE MARSDEN HEARING
6 TRANSCRIPTS HOW HE WAS "INCLINED" TO CONFIRM AND UPHOLD THE
7 PRELIMINARY HEARING THAT WAS SCHEDULED TWO DAYS AFTER APRIL 3,
8 2006 WHICH WAS THE DATE OF APRIL 5, 2006. WITH THE COURT
9 APPOINTED MR. EDWARDS SPEAKING ON MY BEHALF IN COURT WAS ILLEGAL
10 BECAUSE I NEVER GAVE MR. EDWARDS MY WRITTEN CONSENT TO HAVE
11 HIS REPRESENTATION. ON APRIL 5, 2006 SAN DIEGO COUNTY SUPERIOR COURT
12 JUDGE BERNARD REVAK REFUSED TO ACKNOWLEDGE MY PLEA TO HAVE
13 MR. EDWARDS REMOVED FROM THE CASE. WHEN I DID QUESTION HIM ON
14 RECORD WHETHER OR NOT HE UNDERSTOOD THAT HE WAS IN FACT, VIOLATING
15 MY U.S.C 6TH AMENDMENT RIGHTS, HE DID REPLY "I UNDERSTAND"
16 I CLARIFIED THAT IT'S MY CONSTITUTIONAL RIGHTS (WHICH ARE PROTECTED)
17 THAT WERE BEING VIOLATED AND JUDGE REVAK REPLIED "I UNDERSTAND
18 THAT". WHETHER ANY REVIEWER CHOOSE TO LABEL THIS BEHAVIOR A
19 JUDICIAL MISCONDUCT OR GRAVE PROCEPURAL ERROR THERE IS NO DENY-
20 ING THE FACT THAT THIS IS AN OBVIOUS VIOLATION AND INTENTIONAL
21 DISREGARD FOR MY CONSTITUTIONAL RIGHTS. ON JUNE 8, 2006 SAN DIEGO
22 COUNTY SUPERIOR COURT JUDGE LEO VALENTINE JR. FURTHER DENIED ME
23 RIGHT TO COUNSEL OF CHOICE BY ALSO FAILING TO ACKNOWLEDGE AN APP-
24 ARENT LACK OF COMMUNICATION BETWEEN ME AND MR. EDWARDS, AS
25 WELL AS MY CONTINUED PROTEST TO BEING ILLEGALLY REPRESENTED BY
26 THIS COURT APPOINTED ATTORNEY. AT HEARING FROM THE ATTORNEY HIMSELF
27 ABOUT OUR "UNPRODUCTIVE" SITUATION THE COURT'S IS REQUIRED TO REMOVE
28 THE ATTORNEY FROM THE CASE. INSTEAD, DESPITE MY OBJECTIONS, THE COURTS

1 would NOT GRANT ME THE RIGHT TO CONTACT AN ATTORNEY OF MY CHOICE,
2 THROUGH THE COURT PROCESS THAT ALLOW'S INDIGENT DEFENDANTS TO STILL
3 ENJOY FULL CONSTITUTIONAL PROTECTION REGARDLESS OF SOCIAL OR FINANCIAL
4 STATUS. I DID REQUEST TO BE REFERRED TO THE INDIGENT PANEL OF SAN
5 DIEGO COUNTY AND WAS ALSO DENIED THIS REQUEST BY JUDGE VALENTINE
6 FROM THIS POINT OF PROCEEDINGS I WAS FURTHER FORCED BY THE COURTS
7 OF SAN DIEGO TO BE REPRESENTED BY A LAWYER WHO WAS HIRED BY
8 THE SAME PUBLIC AGENCY RESPONSIBLE FOR MY PROSECUTION. NO WAY WAS
9 I GOING TO GIVE UP MY RIGHTS TO THIS AGENT SELECTED BY THE AGENCY
10 THATS TRYING TO SEND ME TO PRISON. THE FINAL INJURY WAS COMMITTED
11 WHEN JUDGE VALENTINE ON RECORD (PAGE 92 LINES 1-28 AND PAGE
12 93 LINES 1-9) PROCEEDED TO MAKE AN IRRATIONAL DECISION TO
13 EXCLUDE ME FROM PARTICIPATING IN A TRIAL PROCEEDING. SINCE WHEN
14 DO A DEFENDANTS SILENCE ON THE RECORD CONSTITUTE AN ANSWER? THE
15 JUDGE WENT FAR BEYOND HIS SCOPE OF AUTHORITY IN DECIDING TO ANSWER
16 FOR ME. THIS IS CLEARLY UNCONSTITUTIONAL. A JUDGE'S FUNCTION IS TO
17 STRICTLY RENDER DISCRETION BASED UPON FEDERAL AND STATE LAWS, NOT
18 TO SPEAK FOR CRIMINAL DEFENDANTS. BECAUSE THE SUPERIOR COURTS OF
19 SAN DIEGO COUNTY REFUSED TO REGARD MY CONSTITUTIONAL RIGHTS AFTER
20 MY TIMELY OBJECTIONS OVER THE COURSE OF SUPERIOR COURT PROCEEDINGS
21 DID DENY ME FULL DUE PROCESS OF LAW. THE ILLEGAL REPRESENTATION BY
22 THE COURT APPOINTED ATTORNEY DENIED ME U.S.C 6TH AND 14TH AMENDMENT
23 RIGHTS. AND IN THE MOST SIMPLE WAY I WAS PEDDLED THROUGH COURT
24 PROCEEDINGS BY FORCE WITHOUT SOLIDIFIED REPRESENTATION. BY THE COURT'S
25 CHOOSING TO IGNORE MY OBJECTIONS TO BEING ILLEGALLY REPRESENTED. THIS
26 "TURNING THE OTHER WAY" AND THE AUDACITY TO EXCLUDE ME FROM HAVING
27 A TRIAL IS LIKE ME NOT HAVING NO RIGHTS AT ALL. I WAS DENIED THE
28 RIGHT TO COUNSEL AND COUNSEL OF CHOICE AND I WAS DENIED A TRIAL.

1 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

2 CENTRAL DIVISION

3 DEPARTMENT 29 BEFORE HON. GEORGE W. CLARKE, JUDGE

4
5
6 PEOPLE OF THE STATE OF
CALIFORNIA,

7 PLAINTIFF,

8 VS.

9 ERIC ANGEL THOMAS,

10 DEFENDANT.
11

) MARDEN HEARING

) SCD197488

12
13 REPORTER'S TRANSCRIPT

14 APRIL 3, 2006

15 APPEARANCES:

16 FOR THE PEOPLE:

BONNIE M. DUMANIS
DISTRICT ATTORNEY
BY: KRIS ANTON
DEPUTY DISTRICT ATTORNEY
330 WEST BROADWAY
SAN DIEGO, CALIFORNIA 92101

19 FOR THE DEFENDANT:

GARY EDWARDS
PRIVATE CONFLICTS COUNSEL

21
22
23
24
25
26 REPORTED BY:

SANDRA QUINN SMITH
CSR NO. 11714, RPR
OFFICIAL COURT REPORTER
SAN DIEGO SUPERIOR COURT

1 SAN DIEGO, CALIFORNIA; APRIL 3, 2006; A.M. CALENDAR

2
3 THE BAILIFF: ITEM 11.

4 MR. EDWARDS: GARY EDWARDS AT PCC'S REQUEST TO
5 BE HERE FOR MR. THOMAS.

6 THE COURT: I WILL HAVE THE RECORD REFLECT YOU
7 ARE PRESENT ALONG WITH YOUR ATTORNEY, MR. EDWARDS, AND
8 COURT STAFF, THE PUBLIC AND THE PROSECUTOR HAVE BEEN
9 EXCLUDED FROM THE COURTROOM. I THINK WE LEFT OFF WITH
10 YOU WANTED A DIFFERENT ATTORNEY APPOINTED; IS THAT
11 CORRECT?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: YOU NEED TO TELL ME SPECIFIC REASONS
14 WHY.

15 THE DEFENDANT: SPECIFIC REASON, SIR, IS BECAUSE
16 ANY COURT-APPOINTED ATTORNEY WILL BE AN AUTOMATIC
17 CONFLICT OF INTEREST BECAUSE OF OBLIGATION TO THE
18 COURT COME BEFORE REPRESENTING ME FULLY AS A CLIENT IN
19 MY CONSTITUTIONAL RIGHTS. THIS IS A RIGHT I HAVE
20 UNDER THE 6TH AMENDMENT UNDIVIDED ^{LOYALTY} LOCALITY OF THE
21 COUNSEL IS ESSENTIAL IN THE DUE PROCESS OF THE ^{5TH} 6TH
22 AMENDMENT.

23 THE COURT: ANYTHING SPECIFIC ABOUT THE
24 REPRESENTATION BETWEEN YOU AND MR. EDWARDS AS OPPOSED
25 TO -- IS THERE ANYTHING SPECIFIC ABOUT THE
26 REPRESENTATION BETWEEN YOU AND MR. EDWARDS THAT
27 REQUIRES YOU OR LEADS YOU TO BELIEVE YOU NEED A
28 DIFFERENT ATTORNEY?

1 THE DEFENDANT: NO, SIR. IT'S NOTHING PERSONAL.
2 IT'S JUST THE POSITION THAT HE'S IN. HE IS APPOINTED
3 BY THE COURTS.

4 THE COURT: WELL, THAT'S HOW ATTORNEYS ARE
5 APPOINTED. THERE IS NO OTHER WAY. AN ATTORNEY IS
6 APPOINTED. THE OTHER OPTION IS TO HIRE AN ATTORNEY.

7 THE DEFENDANT: YES, SIR. I AM AWARE OF THAT.

8 THE COURT: WHAT'S YOUR DESIRE?

9 THE DEFENDANT: I WANT TO HIRE AN ATTORNEY.

10 THE COURT: WHAT STEPS HAVE YOU TAKEN TO HIRE
11 THAT ATTORNEY?

12 THE DEFENDANT: RIGHT NOW I HAVE SOME PEOPLE ON
13 THE OUTSIDE THAT'S LOOKING INTO THAT FOR ME RIGHT NOW.

14 THE COURT: IS THERE ANYTHING ELSE YOU WOULD
15 LIKE TO TELL THE COURT?

16 THE DEFENDANT: NOT AT THIS TIME.

17 THE COURT: WHAT I WILL DO IS ORDER THE
18 TRANSCRIPT OR ORDER OF THESE PROCEEDINGS SEALED UNTIL
19 FURTHER COURT ORDER. IF WE CAN INVITE THE PROSECUTOR
20 AND PUBLIC BACK IN.

21 THE BAILIFF: 11(A) AND (B) POOL AND THOMAS.

22 THE COURT: I WILL LET THE RECORD REFLECT THE
23 COURT DID HAVE AN IN-CAMERA HEARING WITH MR. EDWARDS
24 AND MR. THOMAS.

25 AS FAR AS DATES, WHAT'S YOUR REQUEST MR. MOHEN,
26 IF ANY?

27 MR. MOHEN: YOUR HONOR, I DON'T HAVE A REQUEST.
28 IT'S A PACKAGE DATE. THE 5TH DOES WORK OUT FOR

1 PRELIMINARY HEARING FOR US.

2 THE COURT: WHAT I'M INCLINED TO DO IS SIMPLY
3 CONFIRM THE PRELIMINARY HEARING, AND IF MR. THOMAS
4 MAKES ARRANGEMENTS FOR A NEW ATTORNEY, THEN YOU CAN
5 OBVIOUSLY RETAIN THAT ATTORNEY, BUT THE PRELIMINARY
6 HEARING IS SET FOR DAY AFTER TOMORROW, MR. THOMAS, SO
7 I WOULD SUGGEST YOU MOVE QUICKLY. 8:15.

8 MR. EDWARDS: YOUR HONOR, I WAS TOLD 1:15.

9 THE COURT: YES. BOTH AT 1:15. THANK YOU.

10 MR. EDWARDS: THANK YOU, YOUR HONOR.

11 (WHEREUPON THE PROCEEDINGS WERE CONCLUDED.)

12 (BLOCK NUMBERING; NOT PAGES OMITTED.)

13

14

15

16 * HERE Judge GEORGE W. CLARKE DID NOT GRANT REASONABLE TIME
17 PERIOD TO CONTACT A CONFLICT FREE COUNSEL. LINES 2-7

18

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1 STATE OF CALIFORNIA)
2)
3 COUNTY OF SAN DIEGO)
4

5 THE PEOPLE OF THE STATE OF CALIFORNIA

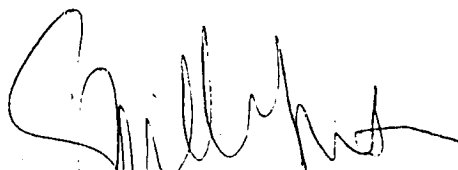
6 VS.

7 ERIC ANGEL THOMAS

8 CASE NO. SCD197488
9

10 I, SANDRA QUINN SMITH, CSR NO. 11714, AN
11 OFFICIAL REPORTER IN THE SUPERIOR COURT OF THE STATE
12 OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO,
13 HEREBY CERTIFY THAT I MADE A SHORTHAND RECORD OF THE
14 PROCEEDINGS HAD IN THE WITHIN CASE AND THAT THE
15 FOREGOING TRANSCRIPT CONSISTING OF PAGES NUMBERED FROM
16 1 TO 3/50, INCLUSIVE, IS A FULL, TRUE, AND CORRECT
17 TRANSCRIPTION OF THE PROCEEDINGS IN THIS CASE.

18 DATED THIS 27TH DAY OF SEPTEMBER, 2006.
19

20
21 
22
23 SANDRA QUINN SMITH, CSR, RPR
24 OFFICIAL COURT REPORTER
25
26
27
28

ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION

DEPARTMENT 47

HON. BERNARD E. REVAK, JUDGE

PEOPLE OF THE STATE OF
CALIFORNIA,

PLAINTIFF,

-VS-

ERIC ANGEL THOMAS,

DEFENDANT.

APR 13 2006

CASE NO. CD197488
DA NO. ABS590
PRELIMINARY HEARING

REPORTER'S TRANSCRIPT

APRIL 5, 2006
SAN DIEGO, CALIFORNIA

APPEARANCES:

FOR THE PLAINTIFF:

BONNIE DUMANIS
DISTRICT ATTORNEY
BY: KRISTIE NIKOLETICH
CERTIFIED LEGAL INTERN
JOHN PRO, SUPERVISING
DEPUTY DISTRICT ATTORNEY
330 W. BROADWAY
SAN DIEGO, CALIFORNIA 92101

FOR THE DEFENDANT:

BY: GARY EDWARDS
ATTORNEY AT LAW
P.O. BOX 99784
SAN DIEGO, CALIFORNIA 92169

KIMBERLY A. MORALES, CSR 7686
OFFICIAL COURT REPORTER
SAN DIEGO, CALIFORNIA 92101

PAGES
213.44

1 SAN DIEGO, CALIFORNIA - WEDNESDAY, 4-5-06, 9:05 A.M.

2 -----00-----

3 THE COURT: CASE NO. CD197488, PEOPLE VERSUS POOLE AND
4 THOMAS.

5 MR. EDWARDS: GARY EDWARDS ON BEHALF OF ERIC THOMAS,
6 WHO IS PRESENT IN COURT IN CUSTODY.

7 MS. KNOCKEART: GOOD MORNING. MARY KNOCKEART ON BEHALF
8 OF MS. POOLE. SHE'S PRESENT IN CUSTODY AS WELL.

9 MS. NIKOLETICH: GOOD MORNING. KRISTIE NIKOLETICH,
10 CERTIFIED LEGAL INTERN, BEING SUPERVISED BY JOHN PRO, ON
11 BEHALF OF THE PEOPLE.

12 MR. EDWARDS: YOUR HONOR, MR. THOMAS WANTS TO ADDRESS
13 THE COURT. HE DOES NOT WANT THE COURT-APPOINTED ATTORNEY.
14 I WAS APPOINTED BY P.C.C. AND HE WANTS TO REQUEST ANOTHER
15 ATTORNEY. SO WE'VE ALREADY HAD A MARSDEN DOWN IN 11 ON
16 MONDAY.

17 THE COURT: YOU MEAN HE WANTS TO RETAIN COUNSEL?

18 DEFENDANT THOMAS: WELL --

19 MR. EDWARDS: WELL, HE DOES, BUT HE'S BEEN UNABLE TO DO
20 THAT.

21 DEFENDANT THOMAS: EXCUSE ME, YOUR HONOR. I WOULD LIKE
22 TO FILE A MOTION FOR A TIME EXTENSION --

23 THE COURT: WAIT A MINUTE.

24 DEFENDANT THOMAS: -- TO GIVE ME TIME.

25 THE COURT: DOES HE HAVE A DOCUMENT FOR ME TO READ?

26 DEFENDANT THOMAS: YES, SIR.

27 THE COURT: GIVE IT TO YOUR LAWYER.

28 MS. KNOCKEART: I'M SORRY, YOUR HONOR?

(2)

1 THE COURT: NO. I WAS TALKING TO THE OTHER GENTLEMAN.

2 MS. KNOCKEART: WE'RE READY TO PROCEED, YOUR HONOR.

3 THE COURT: OKAY. HAVE YOU SEEN THIS DOCUMENT,

4 MR. EDWARDS?

5 MR. EDWARDS: NO, I HAVE NOT, YOUR HONOR.

6 THE COURT: WELL, YOUR CLIENT WOULD LIKE TWO WEEKS.

7 AND I'M NOT SURE IF HE'S TRYING TO HIRE AN ATTORNEY OR HE
8 WANTS YOU REPLACED.

9 ARE YOU, MR. THOMAS, WANTING TO HIRE A LAWYER?

10 DEFENDANT THOMAS: ACTUALLY, YES, I WAS -- I HAVE TO --
11 I NEED TIME TO VERIFY WITH MY PEOPLE ON THE OUTSIDE TO SEE
12 HOW THAT'S GOING. IF THEY'RE NOT ABLE TO DO THAT, THEN I
13 HAVE TO GO ABOUT OTHER MEASURES. BUT EITHER WAY IT GOES, I
14 WOULD NOT WANT HIM TO REPRESENT ME.

15 THE COURT: WAIT A MINUTE. I DON'T WANT TO DEAL WITH
16 ANY CONFLICT YOU MAY HAVE WITH MR. EDWARDS. I'M TRYING TO
17 FIND OUT IF YOU WANT TO CONTINUE IN ORDER TO RETAIN YOUR OWN
18 ATTORNEY. IS THAT WHAT YOU'RE TRYING TO DO?

19 DEFENDANT THOMAS: YES, SIR.

20 THE COURT: HAVE YOU MADE ANY EFFORTS ALONG THOSE
21 LINES?

22 DEFENDANT THOMAS: YES, SIR.

23 THE COURT: WHAT HAVE YOU DONE?

24 DEFENDANT THOMAS: I'VE WENT TO THE LAW LIBRARY, AND I
25 GOT PEOPLE ON THE OUTSIDE THAT'S LOOKING FOR A PRIVATE
26 PRACTICE ATTORNEY RIGHT NOW FOR ME. I'M JUST WAITING WORD
27 RIGHT NOW, BASICALLY. I DON'T WANT TO MOVE AHEAD TOO FAST.

28 THE COURT: I'M SORRY?

1 DEFENDANT THOMAS: I DON'T WANT TO MOVE TOO FAST, YOU
2 KNOW, MOVE AHEAD OF MYSELF.

3 THE COURT: WELL, THIS CASE IS A MONTH OLD BASED ON THE
4 CHARGING DOCUMENTS. WHAT HAVE YOU BEEN DOING FOR THE LAST
5 MONTH INSOFAR AS GETTING A PRIVATE ATTORNEY?

6 DEFENDANT THOMAS: WELL, I -- I WAS ASKING THE JUDGE.

7 THE COURT: PARDON?

8 DEFENDANT THOMAS: I WAS ASKING JUDGE TO OFFER THAT
9 ASSISTANCE CONTACTING PEOPLE FROM THE OUTSIDE.

10 THE COURT: WELL, I KNOW. BUT WHAT EFFORTS HAVE BEEN
11 MADE TO GET A PRIVATE ATTORNEY TO REPRESENT YOU, IN OTHER
12 WORDS, HIRE AN ATTORNEY?

13 DEFENDANT THOMAS: NOTHING, JUST GETTING RID OF MY
14 PUBLIC DEFENDERS.

15 THE COURT: WELL, HE'S NOT A PUBLIC DEFENDER.

16 MR. EDWARDS: WELL, YOUR HONOR, HE HAD A PUBLIC
17 DEFENDER UP UNTIL MONDAY, THEN I CAME IN ON MONDAY. BUT HE
18 TOLD ME HE DIDN'T WANT ANY APPOINTED ATTORNEY, SO --

* 19 THE COURT: I'M GOING TO GO FORWARD WITH IT. I DON'T
20 THINK THAT THERE'S A SHOWING. AND I DON'T DEEM THIS TO BE A
21 MARSDEN MOTION. HE'S ALREADY HAD A MARSDEN HEARING. AND AS
22 I UNDERSTAND IT, THAT WAS FAIRLY RECENTLY.

23 MR. EDWARDS: IT WAS ON MONDAY, YOUR HONOR.

24 THE COURT: YES. ON THE 3RD OF APRIL. SO I'M GOING TO
25 GO AHEAD AND PROCEED. YOU'RE HIS ATTORNEY THAT'S BEEN
26 APPOINTED BY PRIVATE CONFLICTS?

27 MR. EDWARDS: YES, YOUR HONOR.

28 THE COURT: OKAY.

1 DEFENDANT THOMAS: SO BASICALLY, YOUR HONOR, YOU'RE
2 SAYING THAT YOU'RE GOING TO FORCE THIS COURT-APPOINTED
3 ATTORNEY ON ME, IN VIOLATION OF MY SIXTH AMENDMENT RIGHT TO
4 HAVE AN EFFECTIVE ASSISTANCE OF COUNSEL?

5 THE COURT: WELL, IF THAT'S HOW YOU DEEM IT, YES. I'M
6 GOING TO PROCEED WITH THE PRELIMINARY HEARING WITH
7 MR. EDWARDS AS YOUR ATTORNEY.

* 8 DEFENDANT THOMAS: THAT'S A VIOLATION OF MY RIGHTS,
9 SIR.

10 THE COURT: I UNDERSTAND.

11 DEFENDANT THOMAS: CONSTITUTIONAL RIGHTS.

12 THE COURT: I UNDERSTAND THAT.

13 DEFENDANT THOMAS: YOU UNDERSTAND THAT?

14 THE COURT: I UNDERSTAND THAT.

15 DEFENDANT THOMAS: HUH?

* 16 THE COURT: I UNDERSTAND IT.

17 DEFENDANT THOMAS: WELL, CAN I BE REMOVED TO ANOTHER
18 COURTROOM AND TRIED BY ANOTHER JUDGE AT THIS POINT?

19 THE COURT: NO, SIR.

20 DEFENDANT THOMAS: SO YOU'RE DENYING ME?

21 THE COURT: YES.

22 DEFENDANT THOMAS: OKAY. I WILL NOT BE REPRESENTED BY
23 THIS P.C.C., YOU CAN BET THAT.

24 OVERRIDING FEDERAL CONSTITUTIONAL LAW,
25 INTERNATIONAL LAW, LAW OF THE LAND. WOW. DIDN'T KNOW YOU
26 HAD THAT MUCH POWER, YOUR HONOR. CREATOR WILL GET YOU FOR
27 THAT, YOU CAN BET. YOU'RE NOT GOING TO WIN.

28 THE COURT: SWEAR MS. POOLE.

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN DIEGO

3
4 DEPARTMENT 49

HON. LEO VALENTINE, JR., JUDGE

5
6 PEOPLE OF THE STATE OF CALIFORNIA)

7 PLAINTIFF,)

8 VS.)

9 EARL ANGEL THOMAS,)

10 DEFENDANT.)

CASE NO. SCD197488

11
12 REPORTER'S TRANSCRIPT

13 JUNE 8, 2006

14
15 APPEARANCES:

16 FOR THE PLAINTIFF:

BONNIE M. DUMANIS
DISTRICT ATTORNEY
BY: DEANA BOHENEK,
DEPUTY DISTRICT ATTORNEY
330 WEST BROADWAY
SAN DIEGO, CA 92101

17
18
19
20 FOR THE DEFENDANT:

BY: GARY L. EDWARDS, P.C.C.
6445 AVEMODA CRESTA
LA JOLLA, CA 92037

21
22
23
24
25
26
27 MARCIA K. SHIMEK,
28 CSR #8672, REGISTERED PROFESSIONAL REPORTER
SAN DIEGO, CALIFORNIA

1 (SAN DIEGO, CALIFORNIA, JUNE 8, 2006)

2 -000-

3
4 (WHEREUPON, THE FOREGOING PROCEEDING WAS
5 HELD:)

6
7 THE COURT: THIS IS THE MATTER OF THE STATE
8 OF CALIFORNIA VERSUS ERIC ANGEL THOMAS. THE CASE
9 NUMBER IS SCD197488.

10 MR. EDWARDS: GOOD MORNING, YOUR HONOR.
11 GARY EDWARDS, ON BEHALF OF THE DEFENDANT,
12 ERIC ANGEL THOMAS, WHO IS PRESENT IN COURT AND IS IN
13 CUSTODY.

14 MS. BOHENEK: GOOD MORNING, YOUR HONOR.
15 DEANA BOHENEK, ON BEHALF OF THE PEOPLE, IN
16 THIS CASE.

17 THE COURT: GOOD MORNING.

18 GOOD MORNING, MR. THOMAS.

19 THE DEFENDANT: GOOD MORNING.

20 THE COURT: HOW ARE YOU DOING?

21 THE DEFENDANT: I'M DOING FINE.

22 THE COURT: OKAY. THIS MATTER WAS SENT HERE
23 FOR A JURY TRIAL AND I HAVE HAD AN OPPORTUNITY TO
24 BRIEFLY DISCUSS THE MOTIONS THAT HAVE BEEN FILED --
25 THE PRETRIAL MOTIONS BY THE PEOPLE, AND I WANT TO GO
26 THROUGH SOME OF THOSE.

27 AS I LOOKED AT THE CHARGES I NOTE THAT THE
28 CASE SEEMS TO SUGGEST THAT THERE MAY HAVE BEEN A

1 SETTLEMENT CONFERENCE WITH ONE OF THE SETTLEMENT
2 JUDGES. IT LOOKS LIKE THERE WAS AN OFFER TO MR. THOMAS
3 OF A STIPULATED TERM OF SIX YEARS, WHICH WAS THE LOW
4 TERM FOR ONE OF THE OFFENSES FOR WHICH HE HAD BEEN
5 CHARGED.

6 MR. EDWARDS, HAVE YOU HAD A CHANCE TO DISCUSS
7 THAT WITH MR. THOMAS?

8 MR. EDWARDS: YOUR HONOR, I MADE HIM AWARE OF
9 IT. HE WAS NOT WILLING TO DISCUSS IT WITH ME. WE HAD
10 TWO READINESS CONFERENCES AND BOTH TIMES THE RESULT WAS
11 THE SAME.

12 THE COURT: BUT DID YOU, IN FACT, CONVEY THE
13 PEOPLE'S OFFER TO MR. THOMAS?

14 MR. EDWARDS: YES.

15 THE COURT: MR. THOMAS, IS THERE ANYTHING
16 THAT THE COURT CAN DO TO ASSIST, TO HELP TO RESOLVE
17 YOUR CASE SHORT OF A JURY TRIAL?

18 THE DEFENDANT: JUDGE, FIRST, I HAVE A
19 QUESTION.

20 THE COURT: YES.

21 THE DEFENDANT: DID YOU RECEIVE ANY MOTIONS
22 THAT I MAY HAVE FILED?

23 THE COURT: I HAVEN'T RECEIVED ANY MOTIONS.

24 DID YOU WRITE A MOTION FOR THE COURT?

25 THE DEFENDANT: YES, I DID.

26 THE COURT: WHEN DID YOU SEND IT IN?

27 THE DEFENDANT: I SENT IT TO THE JUDGE IN
28 DEPARTMENT 11.

1 THE COURT: JUDGE FRASER IS CURRENTLY IN
2 DEPARTMENT 11. JUDGE WELLINGTON LEFT THERE IN JANUARY
3 OF THIS YEAR.

4 WHEN DID YOU SEND IT?

5 THE DEFENDANT: IT WAS ACTUALLY AFTER THE
6 23RD.

7 THE COURT: OF THIS MONTH?

8 THE DEFENDANT: LAST MONTH.

9 THE COURT: THIS MATTER WAS ON CALENDAR ON
10 THE 6TH. ALSO, ON TUESDAY.

11 MS. BOHENEK: YES, YOUR HONOR. WE TRAILED IT
12 FOR TWO DAYS. I WAS JUST COMPLETING A JURY TRIAL.

13 THE COURT: SO ON THE 23RD THAT IS WHEN THERE
14 WAS A READINESS CONFERENCE WITH JUDGE DANIELSON; IS
15 THAT CORRECT?

16 MS. BOHENEK: I HAVE THE 22ND.

17 THE COURT: THE COURT'S DOCKET SHOWS THE
18 23RD.

19 MS. BOHENEK: THE DEPUTY WROTE THE NOTE NEXT
20 TO THAT. HE MUST HAVE HAD THE WRONG DATE. IT DOES SAY
21 23RD ON MY PAPERWORK.

22 THE COURT: MR. THOMAS, YOU SENT IT THROUGH
23 THE JAIL'S MAIL SYSTEM?

24 THE DEFENDANT: YES.

25 THE COURT: OKAY. MADAM CLERK, WOULD YOU
26 CALL OVER TO DEPARTMENT 11 AND SEE IF THEY HAVE
27 RECEIVED A MOTION THAT MR. THOMAS DIRECTED TO THE
28 COURT. IF THEY DON'T HAVE IT, YOU CAN DISCUSS IT

1 OPENLY HERE IN COURT, MR. THOMAS.

2 DO YOU WANT TO PROCEED IN THAT MANNER?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: GIVE ME THE NATURE OF THE MOTION.

5 THE DEFENDANT: THE MOTION WAS FOR DISMISSAL

6 OF MY P.C.C.

7 THE COURT: DO YOU WANT TO TALK TO ME ABOUT

8 YOUR ATTORNEY?

9 THE DEFENDANT: YES. I ACTUALLY WANT TO BE
10 REFERRED TO THE INDIGENT PANEL.

11 THE COURT: IF YOU WANT TO TALK TO ME ABOUT
12 YOUR ATTORNEY, WHAT I NEED TO DO IS TO EXCLUDE THE
13 PROSECUTOR. THAT IS WHAT I'M TRYING TO FIND OUT IF
14 THAT IS WHAT YOU WANT. I WILL ASK THE PROSECUTOR TO
15 STEP OUT, SO WE CAN DISCUSS WHATEVER CONCERNS YOU HAVE
16 ABOUT YOUR ATTORNEY.

17 IS THAT WHAT YOU WANT TO DO?

18 THE DEFENDANT: YES.

19 THE COURT: MS. BOHENEK, WOULD YOU STAND OUT
20 IN THE HALLWAY. WE WILL CONTACT YOU AS SOON AS WE
21 FINISH THE DISCUSSION.

22 MS. BOHENEK: OKAY.

23 THANK YOU, YOUR HONOR.

24 (WHEREUPON, THE FOREGOING PROCEEDING WAS HELD
25 WITHIN THE PRESENCE OF THE COURT STAFF; GARY EDWARDS,
26 P.C.C.; AND THE DEFENDANT:)

27 THE COURT: ALL RIGHT. THE RECORD SHOULD
28 REFLECT THAT THE ONLY PEOPLE PRESENT IN THE COURTROOM

1 IS THE COURT STAFF; MR. THOMAS; MR. EDWARDS, HIS
2 ATTORNEY.

3 MR. THOMAS, GO AHEAD, SIR.

4 THE DEFENDANT: YES. I FILED A MOTION FOR
5 THE DISMISSAL OF MY P.C.C. DUE TO THE FACT THAT HE IS A
6 COURT-APPOINTED ATTORNEY. I JUST DECIDED I SEE CERTAIN
7 CONFLICTS. I FEEL HE WILL NOT DO A COMPLETE
8 REPRESENTATION OF ME. UNDER MY CONSTITUTIONAL RIGHTS I
9 AM INVOKING MY SIXTH AMENDMENT RIGHT FOR INEFFECTIVE
10 ASSISTANCE OF COUNSEL. misprint!

11 THE COURT: OKAY. YOU SAID YOU WANT
12 EFFECTIVE ASSISTANCE OF COUNSEL AND YOU DO NOT BELIEVE
13 HE CAN PROVIDE THAT FOR YOU, BECAUSE HE IS COURT
14 APPOINTED.

15 THE DEFENDANT: THAT AND ALSO, I MEAN, I HAVE
16 BEEN ASSIGNED THIS P.C.C. FOR OVER A MONTH. HE DOESN'T
17 COME AND SEE ME. HE DOESN'T DISCUSS ANY DEFENSE
18 STRATEGIES THAT HE MAY HAVE TO REPRESENT ME. NONE OF
19 THAT -- YOU KNOW, THAT IS THE DUTY OF A DEFENSE
20 COUNSEL. HE HASN'T DONE NONE OF THAT. I BASICALLY AM
21 DOING MY OWN RESEARCH ON IT -- YOU KNOW, TRYING TO FIND
22 LOOPHOLES AND WHATNOT. HE HASN'T EVEN DISCUSSED WITH
23 ME A DEFENSE STRATEGY, FIRST OF ALL.

24 THE COURT: OKAY.

25 THE DEFENDANT: HE IS A GOVERNMENT AGENT. WE
26 DON'T EVEN HAVE AN AGREEMENT. HIS OBLIGATION TO THE
27 GOVERNMENT COMES BEFORE HIS OBLIGATION TO ME. I NEED
28 UNDIVIDED LOYALTY. I NEED IT AS A RIGHT THAT I HAVE

AND THE COUNSEL (WHICH CONTINUE TO LINES 1-6 ON THE (58)
NEXT PAGE 59)...

1 UNDER THE SIXTH AMENDMENT OF THE FEDERAL CONSTITUTION.
2 THAT IS ALL THAT I'M STATING.

3 THE COURT: SO HE HASN'T VISITED YOU. HE
4 HASN'T HAD A CHANCE TO DISCUSS THE CASE WITH YOU. AND
5 IF I UNDERSTAND YOU CORRECTLY, YOU DON'T BELIEVE
6 BECAUSE HE'S A GOVERNMENT EMPLOYEE HE HAS YOUR
7 INTERESTS IN MIND.

8 THE DEFENDANT: NOT AT ALL. I NEED SOME SORT
9 OF ^{WRITTEN} CONSTITUTIONAL AGREEMENT WITH MY LAWYER. I NEED HIS
10 UNDIVIDED LOYALTY. MISS PPIAT

11 THE COURT: OKAY. ANY OTHER SPECIFIC
12 COMPLAINTS?

13 THE DEFENDANT: NOT AT ALL.

14 THE COURT: MR. EDWARDS, WOULD YOU LIKE TO
15 RESPOND AS TO YOUR VISITS OR YOUR DISCUSSIONS WITH
16 MR. THOMAS ABOUT THIS MATTER?

17 MR. EDWARDS: WELL, YES, YOUR HONOR.

18 I HAVE NOT BEEN TO SEE HIM, BUT THAT WAS
19 BROUGHT ABOUT FROM THE FIRST MEETING WHEN I WAS
20 APPOINTED TO REPRESENT HIM. HE MADE A MARSDEN MOTION
21 10 MINUTES AFTER I ARRIVED. HE DOESN'T WANT TO TALK TO
22 ME. HE DOESN'T WANT TO HAVE ANYTHING TO DO WITH ME.

23 "YOU'RE A P.C.C. I DON'T WANT TO TALK TO YOU."
24 THAT TYPE OF CONDUCT CARRIED OVER TO SUBSEQUENT
25 MEETINGS. THE ARRAIGNMENT, THE SETTLEMENT CONFERENCE.
26 HE WOULDN'T SPEAK TO ME AT THE SETTLEMENT CONFERENCE.

27 HE DIDN'T SPEAK AT THE PRELIM. HE GOT
28 VIOLENT AT THE PRELIM AND THREATENED ME. I'M CERTAINLY

FAILURE TO ACKNOWLEDGE AN APPARENT CONFLICT OF INTEREST (59)
AND ORDER COUNSEL TO BE REMOVED.

1 NOT INCLINED TO GO DOWN TO GEORGE BAILEY AFTER THE WAY
2 HE THREATENED ME AT THE PRELIM.

3 ALL IN ALL HE JUST WON'T COOPERATE. HE WON'T
4 TALK TO ME. I CALLED A COUPLE OF TIMES DOWN THERE. HE
5 DIDN'T RETURN THOSE CALLS. HE'S BEEN IMPOSSIBLE TO
6 WORK WITH.

7 THE COURT: IN TERMS OF YOUR PREPARATION FOR
8 THE CASE AND TRYING THE CASE, WHAT HAVE YOU DONE, SIR?

9 MR. EDWARDS: FACTUALLY IT'S NOT A COMPLEX
10 CASE. I HAVE BEEN PRESENT AT THE PRELIM. HE WAS NOT
11 PRESENT AT THE PRELIM, BECAUSE HE ACTED OUT AND
12 THREATENED THE JUDGE AND MYSELF. SO WE CONDUCTED THE
13 PRELIM WITHOUT HIM. I AM WELL-ACQUAINTED WITH THE
14 FACTS AND I AM READY TO PROCEED.

15 IT'S DIFFICULT WHEN HE WON'T RESPOND. AT THE
16 LAST HEARING TWO WEEKS AGO HIS ONLY REMARK TO ME WAS
17 "WHAT DO YOU WANT? THERE IS NOT GOING TO BE A TRIAL."

18 SO TODAY HE COMES IN AND SAYS I HAVEN'T
19 VISITED HIM. IT CERTAINLY IS INCONSISTENT WITH HOW HIS
20 ATTITUDE HAS BEEN FOR THE LAST TWO MONTHS.

21 THE COURT: HAVE YOU HAD ANY PRIOR CONTACT
22 WITH MR. THOMAS PRIOR TO THIS CASE?

23 MR. EDWARDS: NO, I TOOK IT IN GOOD FAITH.
24 HE'S BEEN LIKE THIS EVER SINCE DAY ONE.

25 THE COURT: OKAY. MR. THOMAS, IS IT TRUE
26 THAT YOU INDICATED TO THE COURT THAT YOU DIDN'T WANT
27 THE P.C.C. AT THE INITIAL HEARING?

28 THE DEFENDANT: YES, HE DIDN'T EVEN SHOW UP

1 ADDITIONALLY, IF YOU SPEAK OUT LOUD, I'M
2 PREPARED TO REMOVE YOU FROM THE COURTROOM. IF IT
3 DISRUPTS THE COURT'S PROCEEDINGS, YOU WILL BE WAIVING
4 YOUR RIGHT TO BE PRESENT.

5 AT ANY TIME YOU HAVE A RIGHT TO RECLAIM YOUR
6 RIGHT TO BE PRESENT BY INDICATING TO THE COURT YOU WANT
7 TO PARTICIPATE. YOU WANT TO BE HERE. YOU WANT TO
8 ASSIST IN THE DEFENSE AND I WILL BRING YOU BACK INTO
9 COURT.

10 I NEED TO KNOW FROM YOU, SIR, ARE YOU
11 READY TO COME BACK INTO COURT AND CONDUCT YOURSELF AS
12 THE COURT INDICATED?

* 13 I WILL TAKE YOUR SILENCE AS NO. IF IT IS
14 YES, TELL ME. OTHERWISE, YOU WILL WAIVE YOUR RIGHT TO
15 BE PRESENT DURING THIS JURY TRIAL. IF YOU DON'T SPEAK
16 TO ME, SIR, I WILL TAKE THAT AS A YES, YOU ARE WAIVING
17 YOUR RIGHT AND WE WILL PROCEED WITHOUT YOU. IF YOU
18 WANT, YOU CAN TALK TO YOUR ATTORNEY. HE'S PRESENT.

19 DO YOU WANT TO TALK TO YOUR ATTORNEY?

20 THE RECORD SHOULD REFLECT THAT HE FLIPPED HIS
21 ATTORNEY THE BIRD SUGGESTING THAT HE DOES NOT WANT TO
22 SPEAK TO HIS ATTORNEY.

23 SO AGAIN, MR. THOMAS, I'M ASKING YOU, ARE YOU
24 WAIVING YOUR RIGHT TO BE PRESENT FOR THIS PROCEEDING?

25 I HAVE A JURY STANDING OUT IN THE HALLWAY UP
26 IN MY DEPARTMENT.

27 THE RECORD SHOULD REFLECT THAT I HAVE COME
28 DOWN TO THE THIRD FLOOR. I HAVE COME TO YOU. I

1 BROUGHT THE COURT STAFF WITH ME TO ACCOMMODATE YOU AND
2 TO PROTECT YOUR RIGHTS TO MAKE SURE THAT YOU CAN BE
3 AVAILABLE.

4 YOUR SILENCE WILL BE TAKEN AS A WAIVER OF
5 YOUR RIGHT. DO YOU WISH TO BE HEARD?

6 THE RECORD WILL REFLECT THAT HE REFUSES TO
7 SPEAK TO THE COURT.

8 I WILL TAKE THAT AS A WAIVER AND WE WILL
9 PROCEED IN YOUR ABSENCE.

10 MR. THOMAS, THANK YOU.

11 MR. EDWARDS: THERE IS ONE ADDITIONAL MATTER
12 AND THAT IS THE JURY WAIVER. I WOULD ASK THAT YOU
13 INQUIRE OF HIM BEFORE YOU REMOVE HIM.

14 THE COURT: MR. THOMAS, SINCE YOU ARE WAIVING
15 YOUR RIGHT TO BE PRESENT, ARE YOU PREPARED TO WAIVE
16 YOUR RIGHT TO A JURY TRIAL AND SUBMIT YOUR MATTER TO A
17 BENCH TRIAL?

18 THE DEFENDANT: WHERE IS GOD?

19 THE COURT: ARE YOU PREPARED TO WAIVE YOUR
20 RIGHT TO A JURY?

21 THE DEFENDANT: WHERE IS THE CREATOR?

22 THE COURT: MR. EDWARDS, DO YOU BELIEVE YOUR
23 CLIENT IS INCOMPETENT TO STAND TRIAL, SIR?

24 MR. EDWARDS: WELL, YOUR HONOR, BEING THAT HE
25 WON'T SPEAK TO ME IT HAS BEEN TOUGH TO EVALUATE WHETHER
26 OR NOT HE IS ABLE TO UNDERSTAND THE PROCEEDINGS, BUT I
27 THINK HE IS COMPETENT TO STAND TRIAL.

28 THE COURT: VERY WELL. FROM THE COURT'S

(b) **GROUND TWO:** _____

Supporting FACTS (state *briefly* without citing cases or law): _____

Did you raise GROUND TWO in the California Supreme Court?
☐ Yes ☐ No.

(c) **GROUND THREE:** _____

Supporting FACTS (state *briefly* without citing cases or law): _____

Did you raise GROUND THREE in the California Supreme Court?

☐ Yes ☐ No.

(d) **GROUND FOUR:** _____

Supporting FACTS (state *briefly* without citing cases or law): _____

Did you raise **GROUND FOUR** in the California Supreme Court?

☐ Yes ☐ No.

23. Do you have any petition or appeal now pending in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: _____

(b) Case Number: _____

(c) Date action filed: _____

(d) Nature of proceeding: _____

(e) Grounds raised: _____

(f) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: COURT APPOINTED

(b) At arraignment and plea: COURT APPOINTED

(c) At trial: COURT APPOINTED

(d) At sentencing: COURT APPOINTED

(e) On appeal: PATRICK HENNESSEY JR. 2356 MOORE ST. STE 201 S.D. CA. 92110

(f) In any post-conviction proceeding: _____

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☒ Yes ☐ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☐ Yes ☐ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court:

NOVEMBER 26, 2007

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

Nov. 26, 2007

(DATE)

Jim Thomas

SIGNATURE OF PETITIONER

PROOF OF SERVICE BY MAIL

I, Eric Thomas, AM A RESIDENT OF FOLSOM STATE PRISON IN THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA. I AM OVER THE AGE OF 18 YEARS, AND ~~I AM~~ AM NOT A PARTY TO THIS ACTION.

MY PRISON NUMBER IS: 768246

MY PRISON ADDRESS IS; P.O. BOX 950, Folsom, Ca. 95763

ON Nov. 26, 2007, I SERVED A COPY OF THE FOLLOWING DOCUMENT:

PETITION FOR WRIT OF HABEAS CORPUS

ON THE FOLLOWING PARTIES BY PLACING THE DOCUMENTS IN A SEALED ENVELOPE WITH POSTAGE FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED AT FOLSOM STATE PRISON (MAILBOX RULE), FOLSOM, CALIFORNIA, ADDRESSED AS FOLLOWS:

UNITED STATES DISTRICT COURT - SOUTHERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK

880 FRONT STREET, SUITE 4290

SAN DIEGO, CA. 92101-8900

THERE IS DELIVERY SERVICE BY THE UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND/OR THERE IS REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED Nov. 26, 2007, AT FOLSOM, CALIFORNIA..

Eric Thomas
<signature here >

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Eric Angel Thomas

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Kern
(EXCEPT IN U.S. PLAINTIFF CASES)

2254	DEFERRED
FILING FEE PAID	
Yes	No
HYP MOTION FILED	
Yes	No
COPIES SENT TO	
Court	Attorneys

FILED

2007 NOV 29 PM 2:58

Kramer, et al

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY Rm DEPUTY(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) ATTORNEYS (UNKNOWN)

Eric Angel Thomas
PO Box 715071
Represa, CA 95671
T-68246

'070W 2257 IEG BLM

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|----------------------------|----------------------------|----------------------------|----------------------------|
| PT | DEF | PT | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE November 29, 2007

SIGNATURE OF ATTORNEY OF RECORD

R. Miller